

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that City Council Approve Burdens of Proof to be Applied in Municipal Administrative Proceedings Conducted Pursuant to §8.24.060(B) of the Lodi Municipal Code

MEETING DATE: October 7, 1998

PREPARED BY: City Attorney

RECOMMENDATION: That the City Council approve the Resolution providing direction with regard to the Burden of Proof applied in Municipal Administrative Proceedings conducted pursuant to §8.24.060(B) of the Lodi Municipal Code

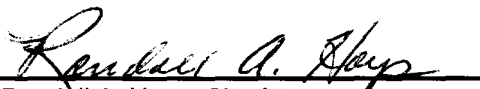
BACKGROUND: The City's Comprehensive Municipal Environmental Response Ordinance has been in place now for several months. Administrative proceedings have been undertaken pursuant to that Ordinance relative to the groundwater contamination situation in the City of Lodi.

In order to provide direction to the Hearing Officers who will handle matters pursuant to the Ordinance, staff has prepared this Resolution which sets forth Council direction relative to the evidentiary burdens of proof that should be applied to proceedings conducted under §8.24.060(B) of the Ordinance. This direction will be of assistance to the Hearing Officers in the conduct of the administrative matters before them.

In the future, staff bring to you suggested revisions to the Comprehensive Environmental Response Ordinance. The burdens of proof which are being suggested and provided as direction by this Resolution will be part of the amendatory package to appear before the Council in the future.

FUNDING: Not applicable.

Respectfully submitted,


Randall A. Hays, City Attorney

APPROVED: _____
H. Dixon Flynn -- City Manager

RESOLUTION NO. 98-153

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI
REGARDING BURDENS OF PROOF TO BE APPLIED IN MUNICIPAL
ADMINISTRATIVE PROCEEDINGS CONDUCTED PURSUANT TO
§8.24.060(B) OF THE LODI MUNICIPAL CODE

=====

WHEREAS, the City Council of the City of Lodi has undertaken and is currently conducting an ongoing legislative review and analysis of the administrative adjudicatory process provided by §8.24.060 of the Lodi Municipal Code; and

WHEREAS, the City Council is aware of proceedings which have been undertaken pursuant to §8.24.060(B) and which are currently pending before an Administrative Hearing Officer of the City of Lodi appointed by this Council; and

WHEREAS, the City Council desires further to assure the public that proceedings undertaken pursuant to §8.24.060(B) are timely and effective both in carrying out the goals and purposes of Lodi Municipal Code Chapter 8.24 to provide appropriate and timely protection of the public health, safety and environment, and in establishing an administrative procedure that is fair and adequately protective of the legal rights of the parties to those proceedings.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lodi does hereby instruct that until further formal action by the Lodi City Council, the City of Lodi Municipal Hearing Officers shall, in all proceedings conducted under §8.24.060(B)(3) of the Lodi Municipal code apply the following evidentiary burdens: (1) the Enforcing Officer shall have the initial burden of producing prima facie evidence of the facts supporting the findings necessary to uphold the relief imposed in the Abatement Action Order; and (2) upon such showing, Respondents shall have the burden of rebutting such facts as to all or any portion of the relief imposed by the Abatement Action Order by clear and convincing evidence, notwithstanding anything to the contrary in §8.24.060(B)(3)(c).

NOW, THEREFORE, BE IT FURTHER RESOLVED, that, based on the above, the City Council of the City of Lodi does hereby instruct that this Resolution shall govern the evidentiary burdens applicable to proceedings under §8.24.060(B), until further formal action on this matter by the City Council.

Dated: October 7, 1998

=====

I hereby certify that Resolution No. 98-153 was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 7, 1998, by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Land, Mann, Pennino and
Sieglock (Mayor)

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


ALICE M. REIMCHE
City Clerk